

§ 18.1005

§ 18.1005 Public records.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with § 18.902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

§ 18.1006 Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined at the hearing may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The judge may order that they be produced at the hearing.

§ 18.1007 Testimony or written admission of party.

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

§ 18.1008 Functions of the judge.

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the judge to determine in accordance with the provisions of § 18.104(a). However, when an issue is raised whether the asserted writing ever existed; or whether another writing, recording, or photograph produced at the hearing is the original; or whether other evidence of contents correctly reflects the contents, the issue is for the judge as trier of fact to determine as in the case of other issues of fact.

29 CFR Subtitle A (7-1-06 Edition)

APPLICABILITY

§ 18.1101 Applicability of rules.

(a) *General provision.* These rules govern formal adversarial adjudications conducted by the United States Department of Labor before a presiding officer.

(1) Which are required by Act of Congress to be determined on the record after opportunity for an administrative agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, or

(2) Which by United States Department of Labor regulation are conducted in conformance with the foregoing provisions. *Presiding officer*, referred to in these rules as *the judge*, means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence at a hearing in such an adjudication.

(b) *Rules inapplicable.* The rules (other than with respect to privileges) do not apply in the following situations:

(1) *Preliminary questions of fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the judge under § 18.104.

(2) *Longshore, black lung, and related acts.* Other than with respect to §§ 18.403, 18.611(a), 18.614 and without prejudice to current practice, hearings held pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901; the Federal Mine Safety and Health Act (formerly the Federal Coal Mine Health and Safety Act) as amended by the Black Lung Benefits Act, 30 U.S.C. 901; and acts such as the Defense Base Act, 42 U.S.C. 1651; the District of Columbia Workmen's Compensation Act, 36 DC Code 501; the Outer Continental Shelf Lands Act, 43 U.S.C. 1331; and the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171, which incorporate section 23(a) of the Longshore and Harbor Workers' Compensation Act by reference.

(c) *Rules inapplicable in part.* These rules do not apply to the extent inconsistent with, in conflict with, or to the extent a matter is otherwise specifically provided by an Act of Congress, or by a rule or regulation of specific application prescribed by the United